

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 78 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DANABHAI MADHABHAI MAKWANA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR KT DAVE, AGP, for Respondent No. 1
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/03/2000

ORAL JUDGEMENT

1. District Magistrate, Ahmedabad, passed an order
on December 13, 1999, in exercise of powers under Section
3(2) of the Prevention of Black Marketing and Maintenance

of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), detaining the petitioner-Danabhai Madhabhai Makwana.

2. The detaining authority observed in the grounds of detention that the petitioner, who is running a fair price shop, had indulged into activities which are detrimental to smooth supply of essential commodities, for personal gain. After considering less drastic remedy, the detaining authority came to conclusion that detention under PBM was the only remedy that can be resorted to for immediately preventing the petitioner from pursuing his activities.

3. The detenu/petitioner challenges the order of detention on various counts. However, Mr. Thakkar, learned counsel appearing for the petitioner, has placed reliance on the ground of supply of legible copies, affecting the right of detenu of making an effective representation, delay in passing the order and delay in forwarding the representation.

3.1 Mr. Thakkar has demonstrated both to learned Assistant Government Pleader, Mr. Dave as well as to this Court that papers supplied to the detenu are not legible and Mr. Dave agrees to this argument of his.

3.2 So far as the delay aspect is concerned, Mr. Thakkar submitted that the incident is dated August 11, 1999, the last statement recorded is dated 16th September, 1999 and the order is passed on 13th December, 1999. Therefore, there is a delay of about three months in passing the order. No explanation is tendered for inaction between 16th September, 1999 and 13th December, 1999. Likewise, there is a delay in forwarding the representation made on behalf of the detenu. Admittedly, the representation dated 28th December, 1999 was received by the detaining authority on 31st December, 1999 and the same was forwarded to the State Government on 3rd January, 2000. Mr. Thakkar, therefore, submitted that there is a lapse of about three days in forwarding the representation, which has not been explained. Mr. Thakkar had another point to argue, namely, that the representation was, in fact, received on 30th December, 1999 and not on 31st December, 1999. In support of his say, he has drawn attention of this Court to Annexure-D, which clearly indicates that the representation was received by the office of the District Magistrate, Ahmedabad, on December 30, 1999. Mr. Thakkar, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. According to him, there is no delay in forwarding the representation and it has been explained by the detaining authority in affidavit in reply in paragraph 17. However, so far as illegible documents are concerned, he has personally verified the documents shown to him by Mr. Thakkar and he concedes in all fairness that the documents are illegible. This Court has also inspected the papers to find that the papers supplied to the detenu by the detaining authority at the time of detention are to some extent not legible, particularly, pages 77, 80, etc.

5. Considering rival side contentions, the order of detention cannot be supported, firstly, for the reason that the documents supplied are not legible. This can be said to have affected the right of the detenu of making an effective representation contemplated under Article 22(5) of the Constitution.

6. Apart from this, it transpires that the representation was received by the detaining authority on 30th December, 1999 and was forwarded to the Government on 3rd January, 2000. Assuming that it was received by the detaining authority on 31st December, 1999, then also there is a delay of two days in forwarding the representation and no explanation is tendered for this lapse. The detaining authority, having become functus officio by then, was expected only to forward the representation and, as such, no time should have been consumed in forwarding the representation and, if it is consumed, it ought to have been explained by the detaining authority, as to what were the factors that prevented the detaining authority from forwarding the representation. This delay in forwarding the representation has also adversely affected the right of the detenu of making an effective representation.

6.1 So far as delay in passing of the order is concerned, there is no dispute about the fact that inspection was carried out on 11th August, 1999 and the order was passed on 13th December, 1999. Time gap between these two days is not explained by the detaining authority in the affidavit in reply. In paragraph 11 of this affidavit in reply, the detaining authority states as under :-

"I say that it is true that inspection of shop was carried on 11.8.1999 and order of detention is passed on 13.12.1999, but at the same time, live-link is not snapped and it cannot be said

that stale incidents are considered for the purpose of passing of the order of detention."

Barring this, there is no other explanation coming from the detaining authority. If the grounds of detention are seen, the detaining authority has observed that the powers under Section 3(2) of the PBM Act are exercised in order to "immediately prevent the petitioner from continuing his black marketing activities". This subjective satisfaction would stand vitiated, if the detaining authority does not take immediate action. If the subjective satisfaction is genuine, action ought to have been taken by the detaining authority and, for that purpose, as per the statement made at the Bar by Mr. Thakkar, the last statement, during the inquiry, was recorded on 16th September, 1999. Thereafter, there is no further Inquiry/Investigation and the order is passed on material collected before that date and, therefore, there is at least a delay of about three months in passing the order. This cannot justify the genuineness of satisfaction of the detaining authority about the immediate need for exercise of powers under PBM Act for immediately preventing the petitioner from pursuing his activities. Under these circumstances, the petition deserves to be allowed.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated 13th December, 1999 is hereby quashed. The detenu-Danabhai Madhabhai Makwana is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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